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CONTACT: RICHARD MILLS  
202-395-3230**

**WTO Upholds Adverse Ruling on  
Foreign Sales Corporation (FSC) Tax**

WASHINGTON - The WTO Appellate Body affirmed today a prior finding by a WTO dispute settlement panel that the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (ETI Act) is inconsistent with United States obligations under the WTO.

“We are disappointed with the outcome,” said United States Trade Representative Robert B. Zoellick. “Given prior decisions, we knew this would be an uphill struggle, but we believed it was important to make our case for a level playing field on tax rules. The United States respects its WTO obligations, which serve America’s interests, and we intend to continue to seek to cooperate with the EU in order to manage and resolve this dispute.”

“This is an especially sensitive dispute that, at its core, raises questions of a level playing field with regard to tax policy,” added Zoellick. “We will be consulting closely with Congress and affected U.S. interests regarding next steps.”

**Background:**

In February, 2000, the WTO Appellate Body upheld a panel decision finding that the Foreign Sales Corporation (FSC) provisions of U.S. tax law violated U.S. WTO obligations. In response to these findings, in November, 2000, the United States enacted the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (ETI Act). The EU challenged the ETI Act, and on August 20, 2001, a WTO panel issued a report containing the following findings: (1) the ETI Act confers a prohibited export subsidy under the WTO Subsidies Agreement; (2) the ETI Act confers an export subsidy which violates U.S. obligations under the WTO Agriculture Agreement; (3) the ETI Act violates the national treatment provisions of Article III:4 of the GATT 1994; and (4) the ETI Act’s transition rules violate the panel’s recommendation (as modified by the WTO Dispute Settlement Body) to withdraw the FSC subsidy with effect from November 1, 2000.

The United States appealed the panel report to the WTO Appellate Body on October 15. The Appellate Body held an oral hearing on November 26-27. The Appellate Body circulated its report on January 14, affirming the findings of the panel.

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